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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,906	08/25/2000	Gerald Davis Bohannon JR.	27798-00101	6971

7590 06/23/2004  
Jenkins & Gilchrist  
3200 Fountain Place  
1445 Ross Avenue  
Dallas, TX 75202-2799

EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

**Office Action Summary****Application No.**

09/648,906

**Applicant(s)**

BOHANNON, GERALD DAVIS

**Examiner**

Ula C Ruddock

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4/12/04 (appeal brief).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1,4-7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,4-7 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. In view of the appeal brief filed on April 12, 2004, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 1, 4-7, and 9 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Romanek et al. (US 5,358,356) in view of Jacobsen, Jr. et al. (US 5,330,828), Molnar et al. (US 5,507,845), and Thomas (US 2003/0166372) or Di Geronimo (US 5,605,721). Romanek et al. disclose an erosion control mat formed of a scrim having a lightweight web secured thereto (abstract). The lightweight web is preferably made up of unconsolidated fibers, which means that the fibers are not secured to one another (col 3, ln 25-27) and would inherently have some thickness. Applicant's filler is made of randomly dispersed loose fiber fill (page 10, line 1 of the

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present Application). Therefore, it should be noted that the Examiner is equating Romanek's lightweight web to the three-dimensional synthetic filler of the present Application. The lightweight web can be made of polyester fibers (col 3, ln 3-6). With regard to claim 9 of the present invention, UV stabilizers may be added to the materials making up the scrim and the web (col 4, ln 2-5). The final composite fabric formed of the scrim and lightweight web can be colored (col 3, ln 64-66). Romanek et al. fail to teach a second netting material, that the polyester fibers are crimped, and that the polyester is substantially recycled polyethylene terephthalate made of green soda bottle material. Romanek et al. also fail to teach that the filler material has a resistance to compression value of about 0.210 to about 0.285 psi/gram of fiber and a percent recovery value of at least 90% following the application of a 0.5 psi compressive load for a period of 5 minutes.

Jacobsen, Jr. et al. (US 5,330,828) disclose a fiber mat which can be used as an erosion control device (col 1, ln 10-11). The fibrous mat can be produced with netting on one or both sides (col 7, ln 52-54). It would have been obvious to one having ordinary skill in the art to have employed Jacobsen's disclosure of a second netting on the erosion control mat of Romanek et al., motivated by the desire to obtain a mat with increased product strength.

Molnar et al. disclose plant sod mats that are especially effective for soil stabilization (abstract). The sod mat comprises a sod reinforcement and stable discrete fibers (col 3, ln 57-59). The discrete fibers can be polyethylene terephthalate and can also be crimped (col 13, ln 55-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used Molnar's crimped polyethylene terephthalate fibers in the erosion control mat of

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Romanek et al., motivated by the desire to obtain an erosion control mat with increased root entanglement.

Thomas (US 2003/0166372) disclose a geotextile material comprising a nonwoven fabric [0019 and 0020] that is produced from recycled materials such as polyester soft drink bottles [0029]. Di Geronimo (US 5,605,721) disclose a nonwoven geotextile pad made from recycled plastic bottles extruded into tiny fibers for the body of the fabric (col 10, ln 1-7). With regard to claim 1 and 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the recycled PET of Thomas and Di Geronimo as the polyester in the filler material of the erosion control mat of Romanek et al. motivated by the desire to reduce the amount of material that is incinerated or sent to a landfill. Furthermore, it should be noted that Romanek et al. disclose that the scrim and lightweight web can be colored (col 3, ln 64-66). While Thomas and Di Geronimo fail to specifically disclose the use of recycled green PET soda bottles, it would have been obvious to have made either Thomas' and Di Geronimo's soda bottles green, motivated by the desire to reduce the amount of green soda materials that are incinerated or sent to a landfill and by the desire to obtain a colored erosion control mat.

Although the combination of Romanek et al, Jacobsen, Jr. et al., Molnar et al., and Thomas and Di Geronimo fail to disclose that the filler material has a resistance to compression value of about 0.210 to about 0.285 psi/gram of fiber and a percent recovery value of at least 90% following the application of a 0.5 psi compressive load for a period of 5 minutes, it is reasonable to presume that said percent recovery value is inherent to the erosion control mat of Romanek et al, Jacobsen, Jr. et al., Molnar et al., and Thomas and Di Geronimo. Support for said presumption is found in the

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use of like materials, crimped polyester fibers secured to a scrim. *In re Fitzgerald*, 205 USPQ 594.

In addition, the presently claimed property of a resistance to compression value of about 0.210 to about 0.285 psi/gram of fiber and a percent recovery value of at least 90% following the application of a 0.5 psi compressive load for a period of 5 minutes would obviously have been present once the Romanek et al, Jacobsen, Jr. et al., Molnar et al., and Thomas and Di Geronimo erosion control mat is provided. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977).

Furthermore, because Romanek's final composite fabric formed of the scrim and lightweight web can be colored (col 3,ln 64-66), it would have been obvious to have selected a color which would blend in with the surrounding area, motivated by the desire to create a blanket that is colored for esthetic purposes and that is camouflaged by the environment and not chewed up by birds or other animals.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 4-7, and 9 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR

*UCR*

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Primary Examiner  
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